

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

MAXELL, LTD.	§	
	§	
V.	§	CAUSE NO. 5:19-CV-00036-RWS
	§	
APPLE, INC.	§	

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MINUTES FOR PRETRIAL CONFERENCE  
HELD BEFORE JUDGE ROBERT W. SCHROEDER III  
MARCH 10, 2021

OPEN: 10:00 a.m.

ADJOURN: 1:46 p.m.

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ATTORNEYS FOR PLAINTIFF: Jamie Beaber, Geoffrey Culbertson, Tripp Fussell, Kfir Levy, Bryan Nese, Saqib Siddiqui and Kelly Tidwell

ATTORNEYS FOR DEFENDANT: Sean Cunningham, Mark Fowler, Erin Gibson, Gil Gillam and Michael Jay

LAW CLERK: Susan Stradley

COURTROOM DEPUTY: Shedera Combs

COURT REPORTER: Kate McAlpine

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10:00 a.m. Case called; Parties introduce themselves and announce ready; Court welcomes everyone; Court reviews pretrial proceedings; Court reviews logistics of trial - courtroom setup, voir dire, trial day, protocols

10:07 a.m. Mark Fowler asks when and where to send COVID test results; Court responds; Mr. Fowler requests partial waiver (one day) for test of a witness; Court will allow; Mr. Fowler inquires about remote courtroom, including number of individuals allowed, enter/exit policy, testing of participants, video/audio to overflow as well as to other remote parties; Court responds; Mr. Fowler notifies Court of potential issue with Apple's first witness; Court responds

10:21 a.m. Geoff Culbertson asks for clarification re testing experts; Court responds; Mr. Culbertson asks about location of testifying witness in courtroom; Court responds; Mr. Culbertson asks about number allowed in courtroom.

10:26 a.m. Mr. Fowler asks for clarification on location of jury and parties during trial

10:27 a.m. Court reviews voir dire procedures; Court will allow parties to set up equipment on Friday prior to voir dire, Monday after voir dire or Tuesday morning

10:39 a.m. Gil Gillam asks if mini-opening statements will be allowed during voir dire; Court will allow

10:40 a.m. Mr. Culberston asks when panel list and questionnaires will be available; Court will make them available Friday at noon for pick up; Mr. Culbertson asks for copies of letter to panel and final questionnaire; Court will provide

10:40 a.m. Court reviews normal trial day

10:42 a.m. Court reviews exchange of witness and exhibit lists; Parties agreement is acceptable; Court explains exhibit procedure

10:46 a.m. Court explains use of clock - no sidebars, jury will be removed from courtroom if necessary; Parties will be charged time

10:47 a.m. Court will not require in-person meet and confer; Issues where no agreement is reached should be filed on the docket by 10 p.m.

10:48 a.m. Court reviews sealing courtroom procedure

10:49 a.m. Court will allow jury notebooks if parties agree

10:50 a.m. Mr. Gillam asks re panel list and questionnaires; Court will make them available electronically at the parties request

10:54 a.m. Court sets the following time limits: voir dire - 45 minutes, openings - 45 minutes, presentation - 18 hours per side and closing - 45 minutes; Court will consider lengthening closing to one hour

10:56 a.m. Mr. Culbertson asks if closing can be split between attorneys; Court responds; Mr. Gillam asks for clarification of voir dire time; Court responds

10:58 a.m. Mr. Cunningham questions re overflow courtroom when sealed; Court responds

10:59 a.m. Court questions re parties agreement to carry deposition designations to trial; Kfir Levy responds

10:59 a.m. Mr. Levy reviews remaining MIL issues and states agreement as to MIL #5

11:02 a.m. Erin Gibson argues re striking portion of Mulhern testimony re estimated sales

price

11:07 a.m. Mr. Levy responds

11:10 a.m. Ms. Gibson responds

11:12 a.m. Court questions re new opinions; Mr. Levy responds

11:14 a.m. Court requests copies of full reports; Mr. Levy responds

11:15 a.m. Mr. Gillam argues updated damages information

11:17 a.m. Mr. Levy responds

11:23 a.m. Court questions re relief sought; Mr. Gillam responds

11:24 a.m. Mr. Levy responds

11:25 a.m. Court requests Mr. Levy and Mr. Gillam to meet and confer

11:26 a.m. Michael Jay argues re MIL #10 relating to the 282 notice

11:30 a.m. Trip Fussell responds re MIL #10

11:32 a.m. Court asks Apple to provide expert report and two patents; Mr. Jay responds

11:32 a.m. Mr. Cunningham addresses two patents re prosecution history estoppel

11:34 a.m. Bryan Nese responds

11:36 a.m. Mr. Cunningham responds and provides citations

11:39 a.m. Mr. Nese responds

11:41 a.m. Jamie Beaber notifies Court MIL #5 is agreed as written; Mr. Jay responds

11:42 a.m. Mr. Fowler argues re MIL #6 re Steve Jobs

11:43 a.m. Court questions re three axis gyro; Mr. Nese responds; Mr. Fowler responds

11:45 a.m. Kelly Tidwell responds

11:47 a.m. Court questions how to test; Mr. Tidwell responds

11:49 a.m. Court questions re purpose of Apple's MIL #6; Mr. Fowler responds

11:51 a.m. Court questions re exchange of opening slides; Mr. Beaber responds; Mr. Fowler responds

11:52 a.m. Mr. Jay argues re Apple's MIL #8

11:53 a.m. Mr. Tidwell responds

11:54 a.m. Court will allow inquiry as to owning stock; Mr. Jay responds; Mr. Tidwell responds

11:55 a.m. Recess

12:14 p.m. Ms. Gibson follows up on Mulhern's damages calculations

12:17 p.m. Mr. Levy responds

12:20 p.m. Court questions when opinion/report was first disclosed to Apple; Mr. Levy responds

12:21 p.m. Ms. Gibson responds

12:23 p.m. Mr. Levy responds

12:24 p.m. Court questions re new opinion; Mr. Levy responds

12:26 p.m. Court questions re why just now disclosed; Mr. Levy responds

12:28 p.m. Court questions re prejudice; Ms. Gibson responds

12:30 p.m. Court asks if deposition would solve; Ms. Gibson responds; Mr. Levy responds

12:33 p.m. Court requires Maxell to produce witness for deposition by Monday; Apple may filed motion to strike by Tuesday; Maxell response due Wednesday

12:34 p.m. Mr. Nese addresses objections to DX 69, 70 and 67

12:37 p.m. Mr. Jay responds

12:38 p.m. Court if Apple cannot lay proper foundation they will not come in; Mr. Nese asks for clarification on when to raise objection during trial; Court responds

12:40 p.m. Mr. Levy addresses objections to DX 130, 131, 134, 135 and 470 stating the objections are withdrawn

12:40 p.m. Saqib Siddiqui addresses objections to DX 311-316

12:43 p.m. Mr. Fowler responds

12:46 p.m. Court questions re prejudice; Mr. Siddiqui responds; Mr. Fowler responds

12:48 p.m. Court will allow as demonstrative and may allow to be admitted during trial

12:48 p.m. Mr. Tidwell states that Apple is withdrawing DX 472; Ms. Gibson confirms

12:49 p.m. Ms. Gibson states Apple has withdrawn all objections except for foundation as to PX 63-65, 67-68, 70, 57, 58 and 59

12:49 p.m. Ms. Gibson addresses objection to PX78

12:50 p.m. Mr. Levy responds

12:52 p.m. Ms. Gibson states objection is withdrawn

12:52 p.m. Mr. Gillam addresses objection to PX 80, 81, 83, 84 and 86

12:54 p.m. Mr. Tidwell responds

12:56 p.m. Mr. Gillam responds

12:58 p.m. Court question why needs to come in; Mr. Tidwell responds; Court asks for cases that have allowed license into evidence; Mr. Tidwell responds

12:59 p.m. Mr. Gillam responds

1:00 p.m. Mr. Tidwell responds

1:00 p.m. Mr. Gillam responds

1:00 p.m. Ms. Gibson addresses objections to exhibits PX 87-89, 90 and 97-102

1:02 p.m. Mr. Tidwell responds

1:04 p.m. Ms. Gibson responds

1:05 p.m. Court questions re wilfulness; Mr. Gibson responds

1:06 p.m. Ms. Gibson addresses objection to exhibit PX 226

1:08 p.m. Mr. Tidwell responds

1:11 p.m. Ms. Gibson responds

1:12 p.m. Court questions re redaction; Ms. Gibson responds; Mr. Tidwell responds; Ms. Gibson responds

1:13 p.m. Court questions re too prejudicial; Ms. Gibson responds

1:14 p.m. Court overrules objection

1:14 p.m. Ms. Gibson addresses objection to PX 794

1:15 p.m. Mr. Levy responds

1:17 p.m. Ms. Gibson responds

1:18 p.m. Court questions re getting information into evidence without using transcript; Mr. Levy responds; Ms. Gibson responds; Court asks parties to work out agreement to use quote slide

1:20 p.m. Court will get out ruling on remaining objections next week - PX 80, 81, 83, 84, 86, 87-89, 90, 97-102

1:21 p.m. Mr. Fowler addresses pending motion to sever; Court questions re resolving during post-trial proceedings; Mr. Fowler responds; Mr. Fussell responds; Court will take up as part of post-trial proceedings

1:23 p.m. Mr. Fowler argues motion to stay

1:26 p.m. Court questions re how AGIS case differs from this case; Mr. Fowler responds

1:28 p.m. Court questions re why motion wasn't filed in November; Mr. Fowler responds

1:30 p.m. Mr. Fowler addresses alternative relief sought re COVID

1:35 p.m. Mr. Culbertson responds

1:39 p.m. Mr. Fowler responds

1:40 p.m. Court will issue written order on motion to stay within a couple of days

1:42 p.m. Court addresses safety of having trial

1:46 p.m. Adjourned